

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EARL WARNER,

Plaintiff,

v.

P. VELARDI; DR. COOK. K. SEELY; R.
WALKER; M. GLYNN; L.D. ZAMORA;
A. CASTRILLION; P. VAUGHN; S.
OSBORNE,

Defendants.

Case No.: 3:16-cv-01924-BEN-DHB

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING ACTION
WITHOUT PREJUDICE**

Earl Warner ("Plaintiff"), a state inmate currently housed at the Richard J. Donovan Correctional Institution located in San Diego, California, and proceeding pro se, has filed a civil rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (Doc. No. 1). Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed In Forma Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

I. Motion to Proceed IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to
 2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 3 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). If the plaintiff is
 4 a prisoner at the time of filing, he may be granted leave to proceed IFP, but he
 5 nevertheless remains obligated to pay the entire fee in "increments," *see Williams v.*
 6 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is
 7 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
 8 844, 847 (9th Cir. 2002). A "prisoner" is defined as "any person" who at the time of
 9 filing is "incarcerated or detained in any facility who is accused of, convicted of,
 10 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
 11 conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C.
 12 § 1915(h); *Taylor*, 281 F.3d at 847.

13 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must
 14 also submit a "certified copy of the[ir] trust fund account statement (or institutional
 15 equivalent) . . . for the 6-month period immediately preceding the filing of the complaint.
 16 . . ." 28 U.S.C. § 1915(a)(2). From the certified trust account statement, the Court
 17 assesses an initial payment of 20% of (a) the average monthly deposits in the account for
 18 the past six months, or (b) the average monthly balance in the account for the past six
 19 months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
 20 § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter, the institution having custody
 21 of the prisoner collects subsequent payments, assessed at 20% of the preceding month's
 22 income, in any month in which the prisoner's account exceeds \$10, and forwards them to
 23 the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

24 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
 25 he has not attached a certified copy of his trust account statements, or an institutional
 26 equivalent, for the 6-month period immediately preceding the filing of his Complaint. *See*
 27 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2. Section 1915(a)(2) clearly requires that
 28 prisoners "seeking to bring a civil action . . . without prepayment of fees . . . shall submit

1 a certified copy of the trust fund account statement (or institutional equivalent) . . . for the
2 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
3 § 1915(a)(2) (emphasis added).

4 Without Plaintiff’s trust account statement, the Court is simply unable to assess the
5 appropriate amount of the initial filing fee which is statutorily required to initiate the
6 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1).

7 **II. Conclusion and Order**


8 For these reasons, IT IS ORDERED that:

9 (1) Plaintiff’s Motion to Proceed IFP (ECF No. 2) is DENIED and the action is
10 DISMISSED without prejudice for failure to prepay the \$400 filing fee required by 28
11 U.S.C. § 1914(a).

12 (2) Plaintiff is GRANTED forty-five (45) days from the date of this Order in
13 which to re-open his case by either: (1) paying the entire \$400 statutory and
14 administrative filing fee, or (2) filing a new Motion to Proceed IFP, which includes a
15 certified copy of his trust account statement for the 6-month period preceding the filing of
16 his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2(b).

17 (3) The Clerk of the Court is DIRECTED to provide Plaintiff with a Court-
18 approved form “Motion and Declaration in Support of Motion to Proceed IFP” in this
19 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and
20 files the attached Motion to Proceed IFP, together with a certified copy of his trust
21 account statement within 45 days, this action will remained dismissed without prejudice
22 pursuant to 28 U.S.C. § 1914(a), and without further Order of the Court.

23 Dated: August 29, 2016

24 
25 Hon. Roger T. Benitez
26 United States District Judge
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